

No. 14/13/87-6Lab./424.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Chairman, Haryana State welfare Advisory Board, S. C. O. No. 87-88, 2nd Floor, Sector-17 D, Chandigarh *versus* Smt. Asha Kumari.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 95 of 1994.

between

SMT. ASHA KUMARI, D/O SHRI BHUP SINGH, V. & P. O. BHOJWAN KHURD TEHSIL GOHANA DISTRICT SONEPAT .. *Workman.*
and

THE MANAGEMENT OF M/S CHAIRMAN, HARYANA STATE WELFARE ADVISORY BOARD, S. C. O. NO. 87-88, 2ND FLOOR, SECTOR-17/D, CHANDIGARH.

(2) CHAIRMAN, FAMILY AND CHILD WELFARE PROJECT, ROHTAK.

Present :

Shri V. S. Singal, Authorised Representative for the workman.

None for the management (*ex parte*).

AWARD

In exercise of the power conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. ID/Rohtak/20592—97, dated the 21st May, 1994:—

Whether the termination of services of Smt. Asha Kumari is justified and in order ? If not, to what relief she is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that she was appointed by the management,—*vide* its letter dated 4th February, 1992. The workman joined her duties according to the above letter on the post of Bal Sevika. The work and conduct of the workman was always quite satisfactory and never given any chance of any complaint during her service period. The management terminated the services of the workman on 15th July, 1992 without assigning any reason for or reasonable cause even the work and conduct of the workman was always quite satisfactory. The service of the workman were regularised by the management,—*vide* order dated the 30th April, 1992 on the same post. As such, she is entitled to be heard before giving any sort of punishment to her. Therefore, the above said termination is absolutely illegal, unwarranted, unconstitutional, *mala fide* and against the principle of natural justice. Such type of termination is also amounts to unfair labour practices. At the time of termination no notice was given to the workman, no charge-sheet was issued to the workman, no enquiry, was held by the management, no notice was sent to the Government on the prescribed form, no seniority list was displaced at the time of termination and no retrenchment compensation was paid to the workman, therefore, the management has contravened Section 25-F of the Industrial Dispute Act, and mandatory provision of chapter V-A of the Industrial Dispute Act were not complied with. The management has also appointed Smt. Sunita Devi on the same post on which the workman was working and Smt. Sunita Devi is still working in the office of the management. The management has not adopted the mandatory procedure of 'last come-first go', therefore, the management has contravened Section 25-G, H and N of the Industrial Dispute Act. The workman requested to the management many a times regarding her illegal termination but to no effect. Hence this claim statement was filed that the workman is liable to be reinstated with continuity of service with full back wages and also alongwith resultant benefits.

3. The management were summoned through registered post but no one appeared on behalf of the management, hence the management was proceeded against *ex parte*. In *ex parte* evidence the workman has come into witness box as WW-1 and closed her evidence.

4. Smt. Asha Kumari workman has made the statement that she was appointed on 4th February, 1992. Work and conduct of the workman is quite satisfactory and she was confirmed on 30th April,

1992,—*vide* order the copy of which is Ex. W-1. She was terminated from the service,—*vide* order dated 15th July, 1992, the copy of the orders is Ex. W-2. After said termination namely Smt. Sunita, Omvati and Sushila have been appointed.

5. Ex. W-1 is the appointment letter of the workman of 30th April, 1992 on the temporary post. Ex. W-2 is the relieving chit order passed by the Chairman dated 15th July, 1992. The workman has worked only for three months and she has not completed 240 days of service in a year.

6. The learned Authorised Representative for the workman made the submission that though the workman had not completed 240 days, but she is liable to be continue in service and action of the respondent is *mala fide* for the submission on the reliance was placed on Raghbir Singh *versus* The State of Haryana through the Secretary Revenue Department, Haryana, Chandigarh and another, cited in 1990 (1) RSJ, 304, holding that the services being terminated so that he may not complete 240 days—Services of Government employee cannot be terminated so as to deprive him of the right to acquire status of regular employee. The reference was also made to Balraj Ex-Tractor Driver *versus* The Presiding Officer, Labour Court, Ambala, cited in RSJ (1) 580, holding that the termination order set aside being violative of Section 25-F—Workman entitled to be reinstated with full back wages mere fact that some regular person had also joined services is of no consequence. Direction for reinstatement with full back wages and 12% of interest per annum. As the workman has made the statement that after she was removed Smt. Sunita Devi, Omvati and Sushila Devi were appointed and they are still working. It is proved that order took place cause of *mala fide* and in view of authority in 1990 (1) RSJ, 304. I am of the view that the workman is entitled to be reinstated on the job with continuity of service and with full back wages. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

P. L. KHANDUJA,

The 10th February, 1995.

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.

Endorsement No. reference 9594/293, dated the 22nd February, 1995.

Forwarded (four copies), to the Secretary to Government, Haryana Labour and Employment Departments Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.

No. 14/13/87-6Lab./442.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s. Managing Director, Haryana State Land Development Bank, Chandigarh *versus* Bal Kishan.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 463 of 1988

between

BAL KISHAN, S/O SHRI RAM SINGH C/O SHRI S.K. GOSWAMI, LABOUR LAW ADVISOR,
647/7, JAWAHAR NAGAR, NEW RAILWAY ROAD, GURGAON

and

THE MANAGEMENT M/S. (1) MANAGING DIRECTOR, HARYANA STATE LAND DEVELOPMENT BANK, CHANDIGARH (2) THE TAORU PRIMARY CO-OPERATIVE LAND DEVELOPMENT BANK LTD., TAORU DISTRICT MOHINDERGARH

Present :

Shri S.K. Yadav, Authorised Representative for the workman.

Shri S. K. Goswami Authorised Representative for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the Governor of Haryana referred the following dispute, to this Court for adjudication,—*vide* Haryana Government endorsement No. 26740—46, dated 9th July, 1987 :—

Whether termination/retrenchment of services of Bal Kishan is legal and justified ? If not, to what relief is he entitled ?

2. According to the claim statement, the workman was appointed as a Peon on 19th November, 1985 out of the 20 per cent reserve quota meant for Scheduled Caste alongwith four other persons. Services were terminated on 15th November, 1986 without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act. It was pleaded that no charge-sheet or show cause notice had been served upon the workman and his services had been illegally terminated. The workman was getting a salary of Rs. 809 plus dearness allowance.

3. The management took up the plea that the services were terminated in terms of the frame work of the contract of employment and the workman had been engaged on daily wages. It was denied that he was appointed on 18th November, 1985 or in the reserved quota.

4. On the pleadings of the parties, following issues were framed on 19th November, 1987 :—

- (1) Whether termination/retrenchment of Shri Bal Kishan is justified and in order ? If not, to what relief is he entitled ?
- (2) Whether the respondent-management does not fall within the scope and ambit of Industry as defined in the I.D. Act ?
- (3) Whether the claimant is stopped for seeking relief from this Court as alleged ?

5. I have heard authorised representatives of the parties and have gone through the evidence on record. My findings on the issues are as under :—

Issue No 2 :

6. This issue was not pressed before me, therefore, no finding is called for.

Issue No. 1 and 3 :

7. The management has examined Om Parkash MW1, who deposed that Bal Kishan was appointed in December, 1985 as Peon on daily wages. He stated that they had received instructions from the Government to remove the excess staff and since the workman was junior most, his services were terminated. He produced Ex. M1 photo copy of the direction. He further stated that the workman had filed suit for declaration and injunction and had obtained stay order restraining the management from terminating his services. He proved the copy of the plaint, application, affidavit, copy of the stay order, Ex. M2 to Ex. M5. He added that the services had been terminated on 29th August, 1986, but they allowed him to continue since stay order had been received and the suit was ultimately withdrawn on 14th November, 1986. He stated that immediately on withdrawal of the suit, they had dispensed with the services of the petitioner and the petitioner had not completed service of 240 days. Cross-examination was deferred and the witness was directed to get the attendance register. Witness had got the record on the adjourned hearing and had deposed that the petitioner was present on 29th August, 1986 and 30th August, 1986 and no order of termination was passed since the petitioner was on daily wages. He clarified that since the petitioner had obtained stay order from the Civil Court, therefore, his services were not dispensed with.

8. The workman has stepped into the witness box as WW1. He reiterated the case set out in the claim statement and has sought his reinstatement with full back wages. Shiv Kumar WW2 brought the summoned record pertaining to Khurshid Ahmed and deposed that Khurshid Ahmed had been engaged as Chowkidar on 5th February, 1990. He proved the copy Ex. WW-2/1.

9. According to the management, the petitioner had worked from December, 1985 to August, 1986 and by then he had not completed 240 days and was not entitled to any retrenchment compensation or notice. It was argued on behalf of the management that the services of the petitioner were for a fixed term and were dispensed with as no longer required. It was argued that the workman had obtained stay order on 29th August, 1986 solely with a view to complete a tenure of 240 days and had later on withdrawn the suit in November, 1986 and he is not entitled to any relief.

10. On the other hand, it was argued on behalf of the workman that he had put in continuous service of over 240 days and there is no evidence on the file to show that the appointment was for a fixed term and since he had completed 240 days continuous service, the management was required to comply with the provisions of Section 25F of the Industrial Disputes Act. The plea raised by the management is that the petitioner was employed in December, 1985 while the stand taken by the workman is that his services were engaged on 18th November, 1985. The record was with the management, but they have not produced any material in support of their pleadings. There is no evidence on the file that the petitioner had been engaged in the special quota meant for Scheduled Caste. However, the record shows that the workman had put in 240 days of continuous service. The workman was marked present on 29th August, 1986 and on 30th August, 1986, therefore, the statement made by MWI that the services had been terminated on 29th August, 1986 is not correct.

11. Admittedly, no notice or retrenchment compensation was paid to the petitioner at the time of passing of the order of termination. The removal of the workman in contravention of the provisions of Section 25F of the Act amounts to termination as after completion of 240 days a right is vested with the workman and his services can be terminated only in accordance with law. It is thus found that the termination in this case is in violation of the provisions of the Act and the workmen is entitled to reinstatement with full backwages. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 8th February, 1995

Endorsement No. 249, dated the 28th February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab. 444.-In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. IV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s. H.C.L. Ltd. (Instruments Division) 3, Udyog Vihar, Dholera (Gurgaon) *versus* Jawahar Lal Mukhia.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 518 of 1988

between

JAWAHAR LAL MUKHIA, S/O GANGU MUKHIA, C/O SHRI SHARDHA NAND, GENERAL SECRETARY, GURGAON FACTORIES WORKERS UNION, A.I.T.U.C. OFFICE, 214/4, MARLA, GURGAON .. *Workman*

M/S. H.C.L. LTD. (INSTRUMENTS DIVISION), 3, UDYOG VIHAR, DUNDAHERA (GURGAON). .. *Management*

Present :

Shri Shardha Nand, A.R. for the workman.

Shri M.P. Gupta, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana, referred the following dispute, between the parties, mentioned above, to this Court, for adjudication, *vide* Haryana Government endorsement No. 42691-96, dated 19th September, 1988 :—

Whether termination of services of Shri Jawahar Lal Mukhia is legal and justified ? If not, to what relief is he entitled ?

2. According to the claim statement, the petitioner was working as a helper with the management from 19th November, 1984 to 1st March, 1988 and was drawing a salary of Rs. 535 P.m. No notice or retrenchment compensation was given, therefore, the petitioner has sought his reinstatement with full back wages.

3. The management took up the plea that the workman was appointed on 1st May, 1987 on temporary basis upto 31st July, 1987 and later on his appointment was extended upto 29th February, 1988 and the workman was directed to collect compensation but he did not collect the same and has no right to claim reinstatement as he was temporarily appointed and his services were terminated by virtue of the contract of service.

4. On the pleadings of the parties, following issues were framed :—

- (1) Whether termination of services of Shri Jawahar Lal Mukhia is legal and justified ? If not, to what relief is he entitled ?
- (2) Relief.

5. I have heard authorised representatives of the parties and have gone through the evidence on record. My findings on the issues are as under :

Issues No. 1 and 2 :

6. The management has examined Yakub MW1, who proved the appointment letter Ex. M1,—*vide* which, the petitioner had been appointed as a temporary helper with effect from 1st May, 1987 and for a period of three months. He deposed that the appointment was extended for a period of six months,—*vide* letter Ex. M2 and then for a period of one month,—*vide* letter Ex. M3. He stated that during this period, work of the petitioner was not satisfactory and the period had been extended in order to watch his performance and a warning letter Ex. M4 was also given to the petitioner. It was denied that the petitioner was appointed on 15th November, 1984. Vinay Jain MW2 deposed that the service period was extended from time to time and the work of the petitioner was not satisfactory and his services were terminated on 29th February, 1988. Documents Ex. M6 to Ex. M9 were also introduced in evidence.

7. Jawahar Lal WW1 stated that he had started working with the management since 19th November, 1984 but no appointment letter was given and his services were terminated on 1st March, 1988, and no termination letter was handed over to him, nor he had been paid any compensation. Kuldeep Kaur WW2, Secretary of the employees union deposed that the petitioner had started working with the management since November, 1984 and she had worked with the management from January, 1979 to April, 1987 and she had been working in Delhi office as Operator. Hukam Chand WW3 was the President of the Employees union. This witness was also working in Delhi. It has come in the statement that the petitioner was employed at Urgaon.

8. The management is relying upon an authority reported as *M. Venugopal versus Divisional Manager, L.I.C. 1994 (I) LLN* page 545 and an argument was made on their behalf that the termination of services of the workman was a result of non-renewal of the contract of employment between the employer and the workman and since a condition had been laid in the appointment letter, therefore, right to continue in service automatically came to an end on the expiry of the period. It was argued that service condition had been made in the appointment letter in relation to this workman and he had been appointed for a fixed period, which had been extended, but since the work of the petitioner was not satisfactory, notice Ex. M6, memo Ex. M7, letter Ex. M9 had been served upon the petitioner.

9. On the other hand, argument made on behalf of the workman was that the workman had worked from 19th November, 1984 to 1st March, 1988 continuously and he had completed more than 240 days of service and his termination would fall under the definition of retrenchment and as such, it was mandatory to follow the provisions of Section 25F of the Act. It was contended that the mandatory provisions of the Act were not followed and the workman was entitled to reinstatement with continuity of service and full back wages.

10. Retrenchment includes termination of service by efflux of time or term of agreement. The fact that an order of appointment contains a self operating clause terminating the services of the employee after providing for temporary employment for a fixed period will not obliterate the fact that the services of the employee were terminated on a particular day. To write into the order of appointment, the date of termination confers no immunity from Section 25F of the Act. Admittedly, the workman had actually worked for a period not less than 240 days within the period of 12 months under the employer, therefore, he is deemed to be in continuous service and therefore, he was entitled to retrenchment compensation under Section 25F of the Act. The termination in violation of the provisions contained in Section 25F renders the termination void and it entitles the workman to a declaration for continuation in service with full back wages.

11. The argument that retrenchment compensation was offered to the workman is not enough, as no material has been placed on the file to show that it had actually been offered or that the amount had been sent by cheque or draft. The workman was drawing a salary of Rs. 535 P.M. As such, the claimant is reinstated with full back wages and continuity of service. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 247, dated the 28th February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh under Section 15 the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 3rd April, 1995.

No. 14/13/87-6Lab./494. -In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Check Mat Chemical (P) Ltd., Bhadurgarh (Rohtak) *versus* Kanwar Singh.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 770 of 1992

between

SHRI KANWAR SINGH C/O SHRI R. S. YADAV, BHARTIYA MAZDOOR SANGH,
KATH MANDI, RAILWAY ROAD, BHADURGARH DISTRICT ROHTAK. . . *Workman*
and

THE MANAGEMENT OF M/S CHECK MAT CHEMICAL (P) LTD., BAHADURGARH,
DISTRICT ROHTAK

Present :

None, for the parties.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication, - *vide* Labour Department, Endst. No. SOV/Roh/128-92/34790-98, dated 24th July, 1992 : - *

Whether the termination of services of Shri Kanwar Singh is justified and in order ? If not, to what relief he is entitled ?

2. Case called several times, but no one is present on behalf of the parties. Hence the reference petition is dismissed in default. The reference is answered and returned accordingly, with no orders as to costs.

The 28th February, 1995.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.

Endorsement No. ref. 770-92/440, dated 28th February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.